

OFFICE OF THE GOVERNOR
STATE OF HAWAII

PROCLAMATION

By the authority vested in me as Governor by the Constitution and laws of the State of Hawaii, in order to protect the health, safety, and welfare of the people, I, NEIL ABERCROMBIE, Governor of the State of Hawaii, hereby determine, designate, and proclaim as follows:

WHEREAS, over 400 large flocking Hawaiian geese (*Branta sandvicensis*), commonly known as nene geese, which have a well-established nesting colony on the grounds of the Kauai Lagoons Resort, a property situated between the two runways at the Lihue Airport on Kauai, pose a serious threat to public safety, passenger airliners, and other aircraft that use Lihue Airport; and

WHEREAS, from the period of January 1, 1995 to November 30, 2010, there were 1,054 total bird strikes at the Lihue Airport; and

WHEREAS, goose strikes cause damage to aircraft 57% of the time and have been known to cause fatalities to passengers on board aircraft; and

WHEREAS, the Federal Aviation Administration and United States Department of Agriculture Wildlife Services recommended a zero tolerance for geese at airfields due to their large size and flocking behavior; and

WHEREAS, the Kauai Lagoons Resort contains 48.55 acres of wetlands between the angle formed by the two runways at Lihue Airport; and

WHEREAS, from 2008 to 2010 there were 5,228 nene geese sightings at Lihue Airport documented by the United States Department of Agriculture Wildlife Services; and

WHEREAS, 65% of the nene geese sightings came from an extremely critical area for landing and departing aircraft, the south end of Runway 17-35, which is in very close proximity to known nesting areas on the Kauai Lagoon Resort property; and

WHEREAS, the nene geese have daily flights that typically take place in early morning and late afternoon and their long, slow flight pattern increases the chance of a strike with aircraft; and

WHEREAS, from 2008 to 2010 the United States Department of Agriculture Wildlife Services sighted nene geese 682 times at the south end of Runway 17-35 crossing the runway two times when taking off, then circling back and heading towards Kauai Lagoons Resort; and

WHEREAS, from 2008 to 2010 the United States Department of Agriculture Wildlife Services dispersed nene geese 4,625 times from the Lihue Airport using various bird hazing dispersal techniques; and

WHEREAS, the population of nene geese at the Kauai Lagoons Resort has steadily increased by 20% each year for the last three years; and

WHEREAS, the United States Department of Agriculture Wildlife Services has advised the United States Fish and Wildlife Service and the Department of Land and Natural Resources that it is paramount to translocate the entire population of nene geese to prevent a serious accident to aircraft and its passengers with potentially catastrophic results; and

WHEREAS, the translocation of nene geese will reduce the threat of a collision between geese and aircraft; and

WHEREAS, the nene goose has been federally listed as an Endangered Species since 1967; and

WHEREAS, the Department of Land and Natural Resources in an effort to mitigate potential bird-strikes with aircraft, has been translocating nene geese from Kauai Lagoons Resort for the past decade, but has been unable to find suitable areas of translocation and amenable landowners on Kauai to keep up with translocation of the thriving reproductive colony; and

WHEREAS, the Department of Land and Natural Resources seeks to translocate the nene geese to neighboring islands to enhance populations on those islands; and

WHEREAS, the large nene population at the Kauai Lagoons Resort, the limited availability of suitable habitat on Kauai, and the growing reluctance of landowners to allow the release of nene geese on their property because of the responsibilities that accompany harboring an endangered species, has made it increasingly difficult to translocate the nene geese; and

WHEREAS, the process required to obtain approvals for Safe Harbor Agreements with various landowners to translocate the nene geese is estimated to take over one year; and

WHEREAS, the Department of Land and Natural Resources and the Department of Transportation, in conjunction with the United States Department of Agriculture Wildlife Services, United States Fish and Wildlife Service, and the Federal Aviation Administration are developing long term plans for management of nene geese at Kauai Lagoons Resort and Lihue Airport, but that process is estimated to take over two years; and

WHEREAS, the need to address the danger to public safety is imminent as the nene goose colony at Kauai Lagoons Resort continues to breed and grow in numbers; and

WHEREAS, the Department of Land and Natural Resources and Department of

Transportation will, once developed, implement a five-year Nene Action Plan to translocate and monitor the nene goose population to remove the threat to aircraft; and

WHEREAS, the five-year Nene Action Plan will be consistent with efforts to protect, maintain, restore, or enhance the endangered species to the greatest degree practicable; and

WHEREAS, due to the inherent threat to public safety, immediate actions must be taken to reduce the risk of bird-strikes by nene geese while long-term management plans are developed and implemented; and

WHEREAS, I find that these state of affairs and circumstances are of such a grave nature as to affect the health and safety of the public and that these circumstances require the invocation of provisions of Chapter 128, Hawaii Revised Statutes, that are effective only during a period of civil defense emergency; and

WHEREAS, the Legislature of the State of Hawaii has appropriated from the general revenues of the State, monies as may be necessary for expenditure by or under the direction of the Governor for the immediate relief of the conditions created by the emergency; and

WHEREAS, in expending such monies, the Governor may allot any portion to any agency, office, or employee, federal, state, or county for the most expeditious and efficient relief of the conditions created by the emergency; and

WHEREAS, section 127-10, Hawaii Revised Statutes, provides that when sections 127-1 to 127-9, Hawaii Revised Statutes, are not in effect, the Governor may exercise any and all powers contained in chapter 128, Hawaii Revised Statutes, in order to provide other disaster relief and that all provisions of the law provided in chapter 128, Hawaii Revised Statutes, during such period are made applicable to other disaster relief, including without limitation, provisions making or authorizing appropriations or

expenditures; and

WHEREAS, pursuant to Act 35, Regular Session Laws of Hawaii 1961, sections 127-1 to 127-9, Hawaii Revised Statutes, have been indefinitely suspended and are not in effect, the provisions of chapter 128, Hawaii Revised Statutes, are applicable to other disaster relief; and

WHEREAS, pursuant to section 127-10, Hawaii Revised Statutes, other disaster relief includes, but is not limited to, the preparation for and the carrying out of all functions, other than functions for which military forces are primarily responsible, to minimize and repair injury and damage resulting from disasters caused by fire, flood, tidal wave, volcanic eruption, earthquake, or other natural causes and major disasters caused by acts of man, including massive oil spills, nuclear accidents, airplane crashes and civil disturbances; and

WHEREAS, pursuant to section 128-8(4), Hawaii Revised Statutes, the Governor is authorized to suspend any law which impedes or tends to impede or is detrimental to the expeditious and efficient execution of, or conflicts with, disaster relief or other emergency functions; and

WHEREAS, pursuant to section 128-9(8), Hawaii Revised Statutes, the Governor is further authorized to relieve hardship and inequities or obstructions to the public health, safety, and welfare found by the Governor to exist in the laws and to result from the operation of federal programs or measures taken under chapter 128, by suspending laws, in whole or in part, or by alleviating the provisions of laws on such terms and conditions as the Governor may impose; and

WHEREAS, pursuant to section 128-10(10), Hawaii Revised Statutes, the Governor may suspend chapter 103D and sections 103-50, 103-53, 103-55, 105-1 to 105-10, and 464-4, Hawaii Revised Statutes, and I find that these provisions, in whole or in part, impede or tend to impede the expeditious discharge of emergency disaster relief

functions for this occurrence and that compliance therewith is impracticable due to existing conditions; and

WHEREAS, pursuant to section 128-10(5), Hawaii Revised Statutes, the Governor is further authorized to order and direct government agencies, officers, and employees, state or local, to take such action and employ such measures for law enforcement, medical, health, fire fighting, traffic control, warnings and signals, engineering, rescue, construction, emergency housing, and other welfare, hospitalization, transportation, water supply, public information, training, and other civil defense and emergency functions as may be necessary, and utilize the services, materials, and facilities of the agencies and officers; and

WHEREAS, pursuant to section 128-10(6), Hawaii Revised Statutes, the Governor is further authorized to take possession of, use, manage, control, and reallocate any public property, state or county, real or personal, required by the Governor for the purposes of this chapter, including, without limitation, airports, parks, playgrounds, and schools, and other public buildings; and

WHEREAS, pursuant to section 128-10(15), Hawaii Revised Statutes, the Governor may take any and all steps necessary or appropriate to carry out the purposes of chapter 128 and to provide for civil defense and other emergency functions.

NOW, THEREFORE, I, NEIL ABERCROMBIE, Governor of the State of Hawaii, hereby determine that the nene goose population located on the Kauai Lagoons Resort in between the two runways of the Lihue Airport is a threat to public health and safety as contemplated by section 127-10, and chapter 128, Hawaii Revised Statutes, and that immediate action is necessary to translocate this population of nene geese to mitigate bird-strikes to arriving and departing aircraft and to eliminate the threat to public health and safety from potentially devastating aircraft accidents. I further determine that the Emergency Provisions of the Full Authorities Cooperative Agreement Between the Hawaii Department of Land and Natural Resources and the U.S. Fish and Wildlife

Service, Pursuant to the Endangered Species Act of 1973 and as Amended November 10, 1978 and September 17, 1982 (the "Cooperative Agreement"), should be invoked for the reasons set forth in paragraph 2(d)(4).

FURTHER, I hereby direct the Department of Land and Natural Resources, in conjunction and cooperation with the Department of Transportation, the Federal Aviation Administration, the United States Fish and Wildlife Service, and the United States Department of Agriculture Wildlife Services, to immediately undertake to translocate the nene geese from the Kauai Lagoons Resort property.

FURTHER, I find that the nene geese are an endangered species and the translocation of the nene geese shall to the extent practicable be to a suitable or protective habitat with periodic monitoring, to protect, maintain, restore, or enhance the endangered species.

FURTHER, the Department of Land and Natural Resources may utilize paragraph 2(d)(4) of the Cooperative Agreement as needed, and take other actions, as needed, to carry out the intent of this Proclamation.

FURTHER, pursuant to section 128-10(5), Hawaii Revised Statutes, I direct the Department of Land and Natural Resources and the Department of Transportation to immediately develop long term plans for management of the nene geese residing at, translocated from, or to be translocated from the Kauai Lagoons Resort and Lihue Airport with the United States Department of Agriculture Wildlife Services, United States Fish and Wildlife Service, and the Federal Aviation Administration.

FURTHER, pursuant to sections 128-8(4), 128-9(8), and 128-10(10), Hawaii Revised Statutes, I hereby suspend the following statutes, as allowed by federal law, to the extent necessary for the translocation of the population of nene geese located on the Kauai Lagoons Resort in between the two runways of the Lihue Airport, or other actions, as needed, for the purpose of mitigating bird-strikes to arriving and departing aircraft and

to eliminate the threat to public health and safety from potentially devastating aircraft accidents:

1. Chapter 46, **county organization and administration**
2. Chapter 6E, **historic preservation** except for those provisions relating to burial sites
3. Chapter 6K, **Kaho'olawe island reserve**
4. Chapter 89, **collective bargaining in public employment**
5. Chapter 89C, **public officers and employees excluded from collective bargaining**
6. Section 103-53, **contracts with the State or counties; tax clearances**
7. Chapter 103D, **procurement code**
8. Chapter 104, **wages and hours of employees on public works**
9. Sections 105-1 to 105-10, **use of government vehicles, limitations**
10. Chapter 142, **animals, brands, and fences**
11. Chapter 150A, **plant and non-domestic animal quarantine and microorganism import**
12. Chapter 171, **public lands, management and disposition of**
13. Chapter 183, **forest reserves, water development, zoning**
14. Chapter 183C, **conservation district**
15. Chapter 183D, **wildlife**
16. Chapter 184, **state parks and recreation areas**
17. Chapter 195, **natural areas reserves system**
18. Chapter 195D, **conservation of aquatic life, wildlife, and land plants**
19. Chapter 197, **general provisions relating to aquatic resources and wildlife**
20. Chapter 205A, **coastal zone management**
21. Section 209-9, **rental or sale of essential commodities during a state disaster; prohibition against price increases**
22. Chapter 261, **aeronautics**
23. Chapter 262, **airport zoning act**
24. Chapter 343, **environmental impact statements**


- 25. Chapter 343D, **environmental disclosure**
- 26. Chapter 344, **state environmental policy**

I FURTHER DECLARE that the provisions of this emergency proclamation shall terminate on June 30, 2016, unless terminated at an earlier date by me.

Done at the State Capitol,
State of Hawaii, this 14th
day of April, 2011.


NEIL ABERCROMBIE
Governor of Hawaii

APPROVED:



DAVID M. LOUIE
Attorney General
State of Hawaii